

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	Crim. No. 03-00516 HG
)	
Plaintiff,)	
)	
vs.)	
)	
ANDY K. TAKATA,)	
)	
Defendant.)	
_____)	

**ORDER GRANTING GOVERNMENT'S MOTION FOR DEPARTURE
PURSUANT TO RULE 35 AS TO DEFENDANT ANDY TAKATA**

On April 26, 2004, Defendant Andy Takata ("Defendant") plead guilty to knowing and intentional possession with intent to distribute 50 grams or more of methamphetamine, its salts, isomers, and salts of its isomers in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A)(viii) (Count 1 of the First Superseding Indictment); knowing and intentional possession with intent to distribute 5 grams or more of methamphetamine, its salts, isomers, and salts of its isomers in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B)(viii) (Count 2); knowing and intentional possession of a mixture and substance containing a detectable amount of methamphetamine, its salts, isomers, and salts of its isomers in violation of 21 U.S.C. § 844 (Count 3); a knowing attempt to corruptly persuade a witness to testify falsely at an official proceeding, Defendant's criminal trial,

with the intent to influence the witness's testimony in that official proceeding in violation of 18 U.S.C. § 1512(b)(1) (Count 4); knowing and intentional possession with intent to distribute 5 grams or more of methamphetamine, its salts, isomers, and salts of its isomers in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B)(viii) (Count 5); and knowing and intentional possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1) (Count 6). (Doc. 15.)

On March 16, 2005, the Government filed a Motion For A Downward Departure as to Count 1, pursuant to U.S.S.G. § 5K1.1. ("Motion for Downward Departure", Doc. 37.) The Motion For A Downward Departure was based upon pre-sentence substantial assistance to government authorities. (Id. at 2.)

At the sentencing hearing on April 4, 2005, the Court granted the Government's Motion For Downward Departure. The Government's Motion to Dismiss Count 7 of the First Superseding Indictment was granted on the same date. The Court sentenced Defendant to 121 months of confinement on Counts 1, 2, and 5; 12 months of confinement on Count 3; 120 months of confinement on Count 4, with Counts 1 through 5 to be served concurrently; and 60 months of confinement as to Count 6, to be served consecutively to Counts 1, 2, 3, and 5; for a total of 181 months of confinement. (Doc. 41.)

On December 12, 2007, the Government filed a Motion For Departure Pursuant To [Fed. R. Crim. P.,] Rule 35 As To Defendant Andy Takata. ("Motion For Departure", Doc. 46.) The Motion For Departure is made pursuant to Fed R. Crim. P., Rule 35(b)(2)(B) and recommends a three-year departure from Defendant's sentence, reducing Defendant's sentence from 181 months to 145 months.

STANDARD OF REVIEW

Federal Rules of Criminal Procedure, Rule 35(b)(2)(B) provides:

(2) Later Motion. Upon the government's motion made more than one year after sentencing, the court may reduce a sentence if the defendant's substantial assistance involved:

. . .

(B) information provided by the defendant to the government within one year of sentencing, but which did not become useful to the government until more than one year after sentencing[.]

A Rule 35 motion is essentially a plea for leniency and is addressed to the sound discretion of the district court. United States v. Smith, 964 F.2d 885, 887 (9th Cir. 1992); United States v. Hooton, 693 F.2d 857, 859 (9th Cir. 1982).

ANALYSIS

The Court finds that Defendant substantially assisted the Government in the investigation and prosecution of criminal activity. A reduction of Defendant's sentence pursuant to Rule 35(b)(2)(B) is appropriate. Based on the nature of Defendant's

cooperation, the circumstances of Defendant's criminal conduct, and Defendant's prior criminal history, the Court grants a sentence reduction of 36 months as to Count 6, finding the sentence that totals 145 months to be consistent with the Sentencing Guidelines and the Sentencing Commission's policy statements.

CONCLUSION

In accordance with the foregoing, the Court **GRANTS** the Government's motion to reduce Defendant's sentence. The Court reduces the sentence of Defendant as to Count 6 of the First Superseding Indictment from 60 months to 24 months of confinement, which results in a total of 145 months imprisonment when the total sentence given in Counts 1-6 are calculated. All other aspects of Defendant's sentence remain unchanged.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, March 25, 2008.



/s/ Helen Gillmor
Chief United States District Judge

United States v. Andy K. Takata, Crim. No. 03-00516 HG; **ORDER GRANTING GOVERNMENT'S MOTION FOR DEPARTURE PURSUANT TO RULE 35 AS TO DEFENDANT ANDY TAKATA**